Supreme Court, U. S.
FILED
JUL 21 1980
MICHAEL RODAK, JR., CLERK

No. 79-1530

in the

Supreme Court of the United States

October Term, 1979

JACQUELYN RENEE TOWN,

Appellant,

vs.

THE STATE OF FLORIDA ex rel. JANET RENO, etc., and the CITY OF MIAMI BEACH, FLORIDA,

Appellees.

On Appeal from the Supreme Court of Florida

MOTION to DISMISS

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OF THE

UNITED STATES

OCTOBER TERM, 1979

JACQUELYN RENEE TOWN,

Appellant,

vs.

STATE OF FLORIDA ex rel. JANET RENO, As State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, and the CITY OF MIAMI BEACH, a Florida municipal corporation,

Appellees.

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MOTION TO DISMISS

Appellee City of Miami Beach (hereinafter: "City Appellee") has been informed by the Office of the Clerk of this Court that on May 21, 1980 each Appellee was directed by letter to respond to Appellant's Jurisdictional Statement. The letter, if it was in fact directed to the City Appellee, was not received by the Miami Beach City Attorney's office.

As acknowledged in Footnote 1 of Appellant's Jurisdictional Statement, the jurisdiction of the Supreme Court has been evoked based on the statutory portion of the challenged injunction ("Question One"), which involves Appellant's use of marijuana as a religious sacrament. As the City Appellee lacks standing to discuss that issue, and as Appellant has not filed a Petition for Certiorari with respect to the nonstatutory issue ("Question Two," involving Appellant's use of her home as a church in violation of the City's zoning law), the City Appellee did not consider it appropriate under the Supreme Court's Rules to file a Motion to Dismiss or to Affirm.

In light of this Court's directive, however, the City Appellee submits this Motion opposing review of the latter portion of the trial court's injunction. The City is of course prepared to submit a Brief on the merits of "Question Two" should this Court decide to review both the statutory and nonstatutory portions of the Appeal.

As noted above, the interest of the City Appellee in this case is limited to that portion of the challenged injunction which prohibits Appellant from operating her residence on Star Island as an organized church. As stated in its Order, the Circuit Court made findings of fact and conclusions of law that:

> 1. The defendant was using her home in an exclusively residential district of Miami Beach as a church, in violation of the City's zoning ordinances;

2. Churches are unconditionally permitted in several other zoning districts within the City of Miami Beach.

As a result of these findings, which Appellant does not dispute or challenge, the court enjoined Appellant from using her Star Island residence;

> as a church or for church purposes or a center for organized church activity and learning, including organized church prayers, organized church business, and organized church study ... [or for] group or communal prayer services, which include singing and chanting and which are held on a regular basis.

However, the court also sought to protect Appellant's First Amendment Rights by warning that the injunction did not prohibit

> The Defendant ... from praying in her own home, either alone or with members of her immediate family, or with several friends who may wish to do so ... This Order is not intended to prohibit the Defendant ... from practicing her religion in her own home except as prohibited above.

Appellant has asserted that the Court's distinction between institutional and noninstitutional religious conduct is unconstitutionally vague, and will result

in government entanglement in religion.

The City cannot and does not deny that the injunction is potentially ambiguous in attempting to distinguish the operation of an organized church (which is banned) from the conduct of noninstitutional religious activities (which are protected). But the City Appellee believes that the Order nevertheless satisfies constitutional standards.

To a substantial degree, the lack of precision expressed by the injunction arises from the intractable nature of the subject matter itself, and is inevitable whenever churches or religions are regulated by a government. It is axiomatic that Local, State and Federal governments have the right to regulate churches in a reasonable fashion; indeed, Appellant does not contest the validity of the City's power to zone churches. Yet it is unrealistic to expect that the definitions and distinctions which necessarily result from such regulations can be infallibly precise. Even if the trial court's distinction between organized church activity and private but group prayer is not as precise as the parties might desire, such a preliminary attempt to enforce a city's proper restrictions on churches in residential areas does not create a substantial or novel federal question.

The challenged injunction clearly provides that Appellant is restrained only from operating an organized church within a small and exclusively residential island in Miami Beach. Appellant concededly has the

right to engage in worship and other personal religious activities in her home, and may also operate an organized church elsewhere within the City in accordance with applicable zoning regulations. Such a limited restraint on religious conduct is reasonable and obviously necessary for the welfare of the City and its inhabitants.

In addition, in the City Appellee's view it would be a potential waste of this Court's time and resources to review on vagueness grounds a temporary injunction which undoubtedly will be revised and improved by the trial court upon final judgment. In this respect the City Appellee disputes the statement made in Footnote 1 of Appellant's Jurisdictional Statement that Appellees have made no effort to seek a permanent injunction. On the contrary, because the City no less than Appellant genuinely desires clear guidelines as to the lawful and unlawful uses of Appellant's residence, the City is actively pursuing the case and seeks to clarify the very ambiguities which allegedly appear in the temporary injunction.

Therefore, unless this Court itself wishes to formulate the appropriate definition of a "church" in the absence of a full trial record, the City urges that the parties and the trial court be permitted the opportunity to more clearly delineate what conduct is prohibited, and what conduct is protected, with respect to the ordinance excluding churches from certain residential areas of Miami Beach.

Indeed, Appellant has conceded that the zoning issue is not properly ripe for Supreme Court review under 28 U.S.C. 1257 (2), in that no final judgment has been entered in the case. See Footnote 1 of Appellant's Jurisdictional Statement.

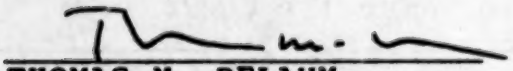
Finally, the City Appellee suggests that Appellant has failed to provide this Court with a jurisdictional basis for review. Although Footnote 1 of Appellant's Jurisdictional Statement invites the Court to exercise certiorari jurisdiction over the zoning portion of the case, Appellant has completely failed to support this proposition in accordance with the requirements of Supreme Court Rule 19.

As Appellant acknowledges, 28 U.S.C. 1257(2) does not authorize appellate review of the second issue on appeal, in that no challenge has been made to the ordinance underlying the injunction, and no final judgment has been entered in the case. Nor does certiorari jurisdiction properly lie under this Court's Rules or 28 U.S.C. 2103, in that Appellant has failed even to argue that the trial court's effort to enforce a city's zoning regulations presents a novel or unsettled issue, or one in which a major conflict of authority exists. See Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P. 2d 823 (1949), app. dismd. 338 U.S. 805 (1949), reh den. 338 U.S. 939 (1950) and City of San Marino v. Roman Catholic Archbishop of Los Angeles, 180 Cal. App. 2d 657, 4 Cal. Rptr. 547 (1960) cert den. 364 U.S. 909 (1960).

Accordingly, the City Appellee respectfully suggests that the zoning portion of this Appeal does not involve a substantial federal question, is not timely for review, and is not properly within the certiorari jurisdiction of the Court.

Respectfully submitted,

JOHN A. RITTER
City Attorney



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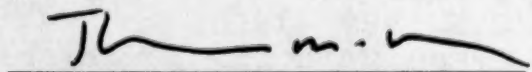
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Motion to Dismiss was mailed to ARTHUR JOEL BERGER, Assistant State Attorney, Counsel for Appellee State, 1351 Northwest 12th St., Miami, Florida 33125 and to MILTON M. FERRELL, JR., 169 E. Flagler Street, Suite 1639, Miami, Florida 33131, Counsel for Appellant this 17 day of July, 1980.



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